

4  
No. 92-1479

Supreme Court, U.S.

344-7-10

AUG 17 1993

In The  
Supreme Court of the United States

October Term, 1993

McDERMOTT, INC.,

*Petitioner,*

vs.

AmCLYDE, A DIVISION OF AMCA  
INTERNATIONAL, INC. and  
RIVER DON CASTINGS, LTD.,

*Respondents.*

On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Fifth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed, March 12, 1993  
Writ of Certiorari Granted, June 28, 1993

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The following opinions, decisions, judgments, and excerpts from the record herein have been omitted in printing this Joint Appendix because they were previously reproduced on the following pages of the Appendix to the Petition for a Writ of Certiorari. They are listed here in chronological order:

Receipt, Release and Settlement Agreement  
(Appendix pp. A-59-65);

Abstracts of "Crane" and "Deck" damages  
(Appendix pp. A-66-67);

Jury Interrogatories (Verdict) (Appendix pp.  
A-35-39);

Trial Court Ruling on "Credit for Settlement"  
issue (Appendix pp. A-51-53);

Trial Court Judgment on Verdict (Appendix pp.  
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Fifth Circuit Court of Appeals' Opinion (Appendix pp. A-1-32);

Fifth Circuit Court of Appeals' Denial of Rehearing and Rehearing En Banc (Appendix pp. A-33-34).

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MCDERMOTT, INC.

CIVIL ACTION

VERSUS

No. H-88-2429

CLYDE IRON, RIVER DON CASTINGS  
LIMITED, BRITISH ROPES LIMITED  
AND INTERNATIONAL SOUTHWEST SLING  
INCORPORATED AND HENDRIK VEDER, B.V.

RELEVANT TRIAL COURT DOCKET ENTRIES

DATE	NR	PROCEEDINGS
7-18-88	1	ORIGINAL COMPLAINT w/JURY DEMAND, filed. SUMMONS issued (4)
7-22-88	2	RETURN OF SUMMONS ISSUED to: River Don Casting Limited on July 18, 1988
	3	Clyde Iron, A Unit of AMCA International on 7-18-88
	4	International Southwest Sling Incorp on 7-18-88
	5	British Ropes Limited on 7-18-88 filed dkt'd 7-22-88 sa
8-19-88	6	Deft's [International Southwest Sling, Inc.] ORIGINAL ANSWER W/JURY DEMAND. dkt'd 8-22-88 sa
8-22-88	7	ORIGINAL ANSWER of Deft British Ropes Ltd, filed. dkt'd 8-23-88 sa
		* * *
11-14-88	10	ORIGINAL ANSWER of Deft, Clyde Iron, filed. dkt'd 11-14-88 sa



11-30-88 11 ORIGINAL ANSWER OF DEFT, River  
Don Castings Limited, filed.  
dkt'd 12-1-88 sa  
\* \* \*

5-4-89 16 CLYDE IRON'S CROSS-CLAIM, filed.  
eod 5-5-89 kg

5-10-89 17 FIRST AMENDED COMPLAINT AND  
DEMAND FOR JURY TRIAL adding  
Hendrik Veder B.V., filed  
eod 5-3-89 sa

6-5-89 18 ORIGINAL ANSWER of Deft Hendrik  
Veder B.V., filed. eod 6-6-89 bj  
\* \* \*

9-25-89 27 Clyde's MOTION for PARTIAL SUM-  
MARY JUDGMENT, filed. eod 10-2-89 bj  
M/D 10-16-89 by clerk  
\* \* \*

10-19-89 35 Deft Clyde's 3RD-PTY COMPLAINT  
against McDermott Marine Contractors,  
Inc. & Hudson Engineering, Inc., filed.  
eod 10-19-89 dj

10-19-89 36 Deft Clyde's COUNTERCLAIM against  
pltf, filed. eod 10-19-89 dj  
\* \* \*

11-6-89 38 MEMORANDUM IN OPPOSITION TO  
CLYDE'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT, filed.  
eod 11-8-89 jd  
\* \* \*

11-28-89 40 (DH) ORDER, entered., parties ntfd.  
The MOTION FOR PARTIAL SUM-  
MARY JUDGMENT is DENIED. bj

11-30-89 41 MCDERMOTT'S REPLY TO COUNTER-  
CLAIM OF CLYDE IRON, filed.  
eod 12-7-89 cj

11-30-89 42 Hudson and McDermott's ANSWER TO  
THIRD PARTY COMPLAINT, filed.  
Atty: Lea eod 12-7-89 cj  
\* \* \*

2-5-90 46 Pltf's MOTION TO DISPOSE OF  
SLINGS, filed. (opposed) M/D 2-26-90  
eod 2-6-90 dj

2-5-90 47 Pltf's MEMO IN SUPPORT of MTN TO  
DISPOSE OF SLINGS, filed.  
eod 2-6-90 dj  
\* \* \*

3-14-90 57 Deft. AmClyde MEMORANDUM IN  
OPPOSITION TO MOTION TO DIS-  
POSE OF SLINGS, filed.  
eod 3-19-90 ymm  
\* \* \*

4-6-90 70 (DH) ORDER, entered. Parties ntfd.  
Pltf's MTN TO DISPOSE OF SLINGS is  
DENIED. eod 4-6-90 dj  
\* \* \*

5-8-90 78 Deft Bridon Ropes LTD's FIRST  
AMENDED ANSWER, filed.  
eod 5-8-90 bj  
\* \* \*

8-1-90 142 SECOND AMENDED COMPLAINT by  
Pltf. McDermott, Inc., filed.  
eod 8-1-90 ymm  
\* \* \*

8-28-90 159 (DH) CONSENT TO PROCEED BEFORE A MAG., entered Parties ntfd. Ordered that this matter is assigned to Mag.Kelt. to conduct all further proceedings, including final judgment. eod 8-29-90 hs

\* \* \*

9-14-90 162 Clyde's MOTION FOR RECONSIDERATION OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed.  
M/D 10-4-90 eod 9-17-90 pv

\* \* \*

9-14-90 165 Defts' Bridon Ropes Ltd.'s, International Southwest Sling, Inc.'s and Hendrik Veder, B.V.'s JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST McDERMOTT, INC., filed.  
eod 9-20-90 bj

\* \* \*

10-17-90 180 Pltf's OPPOS. TO DEFTS BRIDON ROPES, ET AL'S MTN FOR PARTIAL SUMMARY JUDGMENT, filed.  
eod 10-26-90 kds

\* \* \*

10-17-90 184 Pltf's RESPONSE IN OPPOS. TO CLYDE'S MTN FOR RECONSIDERATION OF MTN FOR PARTIAL SUMMARY JUDGMENT AND PLTF'S MTN FOR PARTIAL SUMMARY JUDGMENT, filed.  
eod 10-26-90 kds

\* \* \*

10-31-90 189 Defts Bridon Ropes, Ltd.'s, International SW Sling, Inc.'s, & Hendrik Veder, B.V.'s JOINT REPLY BRIEF TO McDERMOTT, INC. OPPOSITION TO DEFT'S JOINT MTN FOR PARTIAL SUMMARY JUDGMENT, filed. eod 11-6-90 ymm

\* \* \*

11-5-90 192 AmClyde's MEMORANDUM IN OPPOSITION TO McDERMOTT'S MOTION OF PARTIAL SUMMARY JUDGMENT AND RESPONSE TO McDERMOTT'S OPPOSITION TO AmCLYDE'S MOTION FOR PARTIAL SUM. JUDGMENT, filed. eod 11-6-90 ymm

\* \* \*

11-7-90 197 (GAK) ORDER, entered. Parties ntfd.  
1. Deft, International Southwest Sling, Inc.'s UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED ANSWER (Instrument #182) - GRANTED.  
2. Clerk shall file deft's FIRST AMENDED ORIGINAL ANSWER TO PLTF'S SECOND AMENDED COMPLAINT with the papers of this cause.  
eod 11-8-90 fas

11-8-90 198 Deft's FIRST AMENDED ORIGINAL ANSWER TO PLTF'S SECOND AMENDED COMPLAINT, filed.  
eod 11-8-90 fas

\* \* \*

11-7-90 200 Deft Hendrik Veder B.V.'s FIRST AMENDED ANSWER, filed (copy).  
eod 11-8-90

- 11-5-90 201 Deft. River Don Castings' ORIGINAL ANSWER to Clyde Iron's Cross Claim, filed. eod 11-9-90 pv  
\* \* \*
- 11-12-90 205 Deft. AmClyde MOTION IN LIMINE TO EXCLUDE TESTIMONY and/or EVIDENCE OF SUBSEQUENT REMEDIAL MEASURES, filed. eod 11-15-90 hs
- 11-12-90 206 MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE TESTIMONY and/or EVIDENCE OF SUBSEQUENT REMEDIAL MEASURES, filed. eod 11-15-90 hs  
\* \* \*
- 11-13-90 208 (GAK) JURY TRIAL - DAY 1, filed. App. A.J. Lea & R. Moseley f/pltf; R.E. Couhig & T. O'Brien & Ronald Blask local counsel f/defts 1 & 2; D.J. Gonsoulin f/deft #2 (Mtn to withdraw is GRANTED); H.K. Watson & R. Boemer f/deft #3; d. Dursum & E Hunter f/deft #4; J.C. Arnold f/deft #5. Settlements announced between pltf & deft 3, 4 & 5. A 60 day order to dismiss all claim with prejudice in exchange of payment of \$1 million w/i 60 days will be entered. Deft's Mtn in Limine to Exclude Testimony . . . is GRANTED; Deft's Mtn in Limine is Sustained in part & Overruled in part. Order filed. Deft's Mtn in Limine to have judgment entered is DENIED. eod 11-15-90 hs

- 11-13-90 209 McDermott Incorp's MOTION IN LIMINE TO PRECLUDE THE INTRODUCTION BY DEFT'S OF INADMISSIBLE EVIDENCE, filed. eod 11-15-90 hs  
\* \* \*
- 11-13-90 213 (GAK) ORDER, entered Parties ntfd. Ordered that opposing cnsl, and through cnsl., any and all parties and/or witnesses called on behalf of the Pltf are instructed to refrain from any mention or interrogatory, any offering of documentary evidence, concerning those paragraphs set out above corresponding to deft AmClyde, A Unit of AmClyde International, Inc.'s Motion in Limine which this Ct has sustained, w/o first requesting and obtaining a ruling from the Ct outside the presence and hrg of all prospective jurors and jurors ultimately selected in this case, with regard to any alleged matter as presented in the aforementioned paragraphs of the mtn in Limine that this Court has this day sustained. SEE ORDER FOR DETAILS. eod 11-15-90 hs
- 11-13-90 214 (GAK) ORDER GRANTING SUBSTITUTION OF COUNSEL, entered Parties ntfd. Robert E. Couhig and Thomas G. O'Brien are substituted as cnsl of record f/the deft, River Don Castings Limited. eod 11-15-90 hs
- 11-14-90 215 Pltf's MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER CLAIMS DENIED PURSUANT TO EAST RIVER, filed. eod 11-27-90 pv  
\* \* \*



11-14-90 218 (GAK) JURY TRIAL - DAY 2, filed. (Rptr: Taped) Appearances: Lea, Couhig, O'Brien (Outside presence of jury-pltfs Motion to reconsider claims denied pursuant to East River is DENIED). Testimony begins Rule invoked. (Break) Testimony continues. Ct adjourns until 9:00 am on 11-15-90. eod 11-27-90 pv

11-15-90 219 (GAK) JURY TRIAL - DAY 3, filed. (Rptr: Taped) Appearances: same as day 2. Outside presence of jury - Pltf requests permission to make arrangements to transport jurors to see the "hook". Both sides to prepare briefs by 11/16/90. Testimony resumes. (break) Testimony continues. (lunch) Testimony continues. (break) Outside presence of jury-Defts wish to recall witness at a later time. Ct will allow defts to recall witness for direct examination only. Defts elect to continue cross-exam now. Jury returns; testimony continues. Ct adjourns until 9:00 a.m. on 11/16/90. eod 11-27-90 pv

\* \* \*

11-16-90 223 (GAK) JURY TRIAL - DAY 4, filed. (Rptr: taped). Appearances: same as Day 2. Testimony resumes. (break) Testimony continues. (Lunch) Testimony continues. (Break) Testimony continues. Jury excused at 4:24 p.m. Parties heard in argument re pltfs Motion to Permit Jury to View Evidence - GRANTED\* Pltf

will provide transportation. No testimony will be given at the site. A Ct reporter & USM will be requested for purpose of the trip. Ct adjourned until 11/20/90 at 9:00 a.m. eod 11-27-90 pv

\* \* \*

11-19-90 225 Pltfs' MOTION TO ADMIT INTO EVIDENCE AMCLYDE EXHIBITS, filed. eod 11-27-90 pv

11-19-90 226 Pltfs' MOTION TO ADMIT INTO EVIDENCE RIVER DON CASTING EXHIBITS, filed. eod 11-27-90 pv

11-19-90 227 Pltfs' MOTION TO ADMIT INTO EVIDENCE THEIR UNOPPOSED EXHIBITS, filed. eod 11-27-90 pv

11-19-90 228 Defts' MEMORANDUM IN OPPOSITION TO PLTFS MOTION TO RECONSIDER CLAIM DENIED PURSUANT TO EAST RIVER, filed. eod 11-27-90 pv

11-19-93 229 (GAK) JURY TRIAL - DAY 5, filed. (Rptr: Taped) Appearances: same as Day 2. Exhibits discussed outside presence of jury. Testimony resumes. Jury excused at 10:28 a.m. (break) Testimony continues. Jury excused for lunch. Discussion of exhibits (Lunch) If parties can reach an agreement as to any statements that may be made or questions asked at the site of the hook, the Ct will permit. (break) Testimony continues. Jury excused at 2:55 for break. Testimony continues. Ct will recess until 8:45 a.m. on 11/20/90 at which time jurors, Ct, attnys, personnel will go view an exhibit. eod 11-27-90 pv

\* \* \*



- 11-20-90 232 (GAK) MINUTES OF JURY TRIAL - DAY 6, filed. (Rptr: taped). Appearances same as Day 1). Deft object to going to view pltf exhibit 33. Joint stipulation filed. Pltf oral motion in limine re Kenneth Packer is granted in that parties must approach bench prior to asking questions. eod 12-4-90
- 11-20-90 233 JOINT STIPULATION regarding hook on Shearleg crane. eod 12-4-90 pg
- 11-20-90 234 JOINT STIPULATION regarding exhibits. eod 12-4-90 pg
- 11-20-90 235 (GAK) MINUTES OF JURY TRIAL - DAY 7, filed. (Rptr: taped). Appearances same as Day 1) eod 12-4-90
- \* \* \*
- 11-21-90 238 JOINT STIPULATION, FILED. eod 12-6-90 hs
- 11-26-90 239 (GAK) JURY TRIAL - DAY 8, filed. Appearances same as Day 2. Defts mtn f/directed verdict is DENIED. Defts mtn for dollar f/dollar credit for the million dollar settlement between pltf & Dire (sic) Rope if judgment is for the pltf is taken under advisement. Defts mtn for pltf to call Dr. Caulifed as part of their case in chief is DENIED. eod 12-6-90 hs
- 11-26-90 240 JOINT STIPULATION, filed. eod 12-6-90 hs

- 11-27-90 241 (GAK) JURY TRIAL - DAY 9, filed. Appearances same as Day 2. Testimony resumes (Break 10:31-10:36) Testimony continues. Court adjourns until 9 a.m. on 11-28-90. eod 11-6-90 hs
- 11-27-90 242 WRITTEN DEPOSITION TESTIMONY, filed. eod 12-6-90 hs
- 11-28-90 243 (GAK) JURY TRIAL - DAY 10, filed. Appearances same as Day 2. Testimony resumes. (Outside presence of jury: Defts until (sic) provide the Ct with terms of the agreement between the defts in the case. The document will be placed under seal.) (Lunch) Testimony continues. (Break: 3:30-4:00) Testimony continues. Jury excused @ 5:14 p.m. Proposed jury charges are due Mon. 12-3-90. Ct. adjourns until 9 a.m. on 11-29-90. eod 12-6-90 hs
- \* \* \*
- 11-29-90 248 (GAK) JURY TRIAL - DAY 11, filed. Appearances same as Day 2. Testimony resumes. (Break 10:33-11:03) Testimony continues. Jurors excused or lunch at 11:58 am (Lunch) Jury returns at 1:47. Testimony continues. (Break 3:33-4:03) Objections to depo. Jury returns @ 4:38 p.m. Court adjourns until 11-30-90 @ 9 a.m. eod 12-6-90 hs
- \* \* \*
- 11-30-90 252 (GAK) JURY TRIAL - DAY 12, filed. Appearances same as Day 2. Pltf proffers their exhibit # 305. Testimony resumes (break 10:36-11:03) Testimony continues. (Lunch) Testimony continues.

(break 2:46-3:18) Testimony continues.  
Jury excused @ 5:00 until 12:30 p.m. on  
12-3-90. Jury charge conf. et @ 5 p.m. on  
12-3-90. eod 12-6-90 hs

\* \* \*

12-3-90 255 (GAK) JURY TRIAL - DAY 13, filed.  
Appearances A. Lea & R. Moseley  
f/pltf; R. Couhig & T. O'Brien f/defts.  
Testimony resumes (break 2:33-3:00)  
Testimony continues. Court adjourns  
until 9 am on 12-4-90. Proposed jury  
charge conf. will be held later on the  
date. eod 12-6-90 hs

\* \* \*

12-4-90 259 (GAK) JURY TRIAL - DAY 14, filed.  
Appearances A. Lea & R. Moseley  
f/pltf; R. Couhig & T. O'Brien f/defts.  
Testimony resumes. Deft rests 9:32 am.  
Jury excused while parties make mtns.  
Pltfs (sic) mtns for instructed verdict are  
DENIED and GRANTED. Granted as to  
failure of essential purpose. Defense  
reads proffer into the record. Jury  
returns & is excused at 10:10 am until  
9:30 am on 12-5-90. Discussion of  
exhibits. (Break 1:27-1:42) Discussion  
continues. Charge conf. begins @ 2:15.  
eod 12-6-90 hs

12-3-90 260 (GAK) ORDER, entered. Parties ntfd.  
Ordered that deft International South-  
west Sling Incorp. Unopposed Motion  
for Leave to File its First Amended  
Answer is hereby in all things  
GRANTED. The Clerk of this Court is  
ORDERED to file defts First Amended

Answers among the official papers in  
this matter. eod 12-6-90 hs

\* \* \*

12-12-90 264 (GAK) ORDER, entered. Parties ntfd.  
Pltf shall have judgment with prejudice  
against deft British Ropes, Limited;  
International Southwest Slings, Inc., and  
Hendrik Veder, B.V., jointly and sever-  
ally in the total sum of \$1,000,000.00  
subject to the right of pltf to refile  
within 60 days. Each of the parties shall  
bear its own costs and attorneys fees.  
eod 12-14-90 fas

\* \* \*

11-12-90 265 Deft AmClyde's PROPOSED SPECIAL  
INTERROGATORIES TO THE JURY,  
filed. eod 12-20-90

\* \* \*

11-12-90 269 Deft AmClyde's MOTION IN LIMINE  
TO HAVE JUDGEMENT ENTERED OR  
ALTERNATIVELY TO HAVE JURY  
INSTRUCTED, filed. eod 12-20-90 fas

11-12-90 271 Deft's PROPOSED JURY CHARGES,  
filed. eod 12-20-90 fas

11-12-90 272 AmClyde's TRIAL MEMORANDUM,  
filed. eod 12-20-90 fas

\* \* \*

12-5-90 273 (GAK) JURY TRIAL - DAY 15, COURT-  
ROOM MINUTES held 12/5/90, filed.  
(Rptr: Taped) Appearances same as Day  
14. Attorneys make general objections  
to jury charge and interrogatories. Clos-  
ing arguments. (Jury excused @ 2:00).

Court continues @ 2:44 p.m. Jury charge @ 4:05 p.m. Alternate juror excused from case. Jury excused until 9:00 a.m., on 12/6/90 to begin deliberating.  
eod 12-20-90 fas

12-5-90 274 Pltf's PROPOSED JURY CHARGES, filed.  
eod 12-20-90 fas  
\* \* \*

12-6-90 276 (GAK) COURTROOM MINUTES, JURY TRIAL - DAY 16, held 12-6-90, filed. (Rptr: Taped) Appearances same as Day 14. (Jury deliberations begin @ 9:00 a.m.). court responds to jury notes 1 and 2 in presence of counsel and jury. Request for note pads is granted. Testimony of witnesses (written) and the pads written on by witnesses will not be given to the jurors. (Jury note #3 - jurors break from 10:25-11:00). (Lunch 12:15-1:20 w/deliberations continuing afterward). \*Chambers conference: Prof-fers of evidence by pltf and exhibits withdrawn by defts. Jury advised to resume deliberations @ 9:00 a.m., on 12/7/90.  
eod 12-20-90 fas  
\* \* \*

12-7-90 278 (GAK) COURTROOM MINUTES, JURY TRIAL - DAY 17, held 12-7-90, filed. (Rptr: Taped) Appearances same as Day 14. (Jury deliberations continued @ 9:00 a.m.). Verdict reached and read and filed. Jury polled at request of defense counsel. Jury discharged from service 12/8/90. Responses are due 12/21/90. Court adjourned.  
eod 12-20-90 fas  
\* \* \*

12-7-90 280 EXHIBIT LIST OF AMCLYDE, filed.  
eod 12-20-90 fas

12-7-90 281 EXHIBIT LIST OF MCDERMOTT, filed.  
eod 12-20-90 fas

12-7-90 282 EXHIBIT LIST OF RIVER DON CAST-INGS LIMITED, filed.  
eod 12-20-90 fas

12-7-90 283 JURY INTERROGATORIES, filed.  
eod 12-20-90 fas  
\* \* \*

12-7-90 285 JOINT PRE-TRIAL ORDER, filed.  
eod 12-20-90 fas

12-17-90 286 JOINT MOTION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE POST-JUDGMENT MOTIONS, filed.  
eod 12-20-90 fas

12-17-90 287 MEMORANDUM IN SUPPORT OF JOINT MOTION TO EXTEND TIME TO FILE POST-JUDGMENT MOTIONS, filed.  
eod 12-20-60 fas

12-17-90 288 (GAK) ORDER, entered. Parties ntfd.  
1. All parties given until 12-18-90, to file any Post-Trial Mem-oranda of Law. The time for fil-ing responses to such Memoranda is 12-21-90.  
2. Any post-trial motions, includ-ing Motion for Judgment Non Obstante Verdicto, and Motion for New Trial be extended in accordance with the Federal



Rules of Civil Procedure to provide 10 days after the entry of Judgment by the Court.

- 12-18-90 289 POST-JUDGMENT MEMORANDUM OF LAW REGARDING CREDIT FOR SETTLEMENT WITH SLING DEFTS w/attached Judgment, filed.  
eod 12-20-90 fas
- 1-9-91 290 COPY OF DEFTS' (sic) OPPOSITION TO CLYDE AND RIVER DON'S POST TRIAL MEMORANDUM, filed (w/ another file stamp marking of 12-21-90)  
eod 1-11-91 fas
- 1-11-91 Rec'd Ltr from Atty Rockne L. Moseley requesting that a copy of executed "Receipt, Release & Settlement Agreement" be substituted for copy prev. filed 12-21-90 as Exhibit "A" to McDermott Inc.'s Oppos. to Clyde & River Don's Post-Trial Memorandum, fwd to CRD.  
eod 1-17-91 kds
- 1-11-91 291 JOINT MOTION TO DISMISS WITH PREJUDICE AS OF COMPROMISE & SETTLEMENT, filed.  
eod 1-17-91 kds
- 1-14-91 292 (GAK) MEMORANDUM/ORDER entered & ptys ntfd. Defts' mtn for a Hernandez credit is DENIED. (SEE ORDER FOR REASONS)  
eod 1-17-91 kds
- 1-15-91 293 (GAK) JUDGMENT entered & ptys ntfd. The jury verdict awarding total damages in the amount of Two Million, One Hundred Thousand Dollars (\$2,100,000.00) w/no pre-judg. interest,

be reduced by thirty percent (30%), reflecting that percentage of fault allocated to pltf, McDermott, Inc., for a total damages award of One Million Four Hundred Seventy Thousand Dollars (\$1,470,000.00) Judg. in favor of Pltf & against AmClyde for a total amount of Six Hundred Seventy-Two Thousand Dollars (\$672,000.00) (SEE ORDER FOR REMAINING DETAILS OF JUDGMENT).  
eod 1-17-91 kds

- 1-24-91 294 (GAK) ORDER, entered. Parties ntfd. Defts' Bridon Ropes, Ltd., International Southwest Slings, Inc., and Hendrik Veder, B.V. are DISMISSED WITH PREJUDICE.  
eod 1-25-91 mac
- 1-28-91 295 Pltf's MOTION FOR POST-JUDGMENT RELIEF, filed. M/D 2-17-91 by the clerk.  
eod 1-30-91 mac
- 1-28-91 296 MEMORANDUM IN SUPPORT OF PLTF'S POST-JUDGMENT MOTIONS, filed.  
eod 1-30-91 mac
- 1-30-91 297 Defts AmClyde's MTN FOR JUDGMENT NOTWITHSTANDING THE VERDICT, OR ALTERNATIVELY, MTN FOR NEW TRIAL, filed. M/D 2-19-91 by clerk.  
eod 2-4-91 fas
- 1-30-91 298 Deft AmClyde and River Don Castings, Ltd's MEMORANDUM IN SUPPORT OF MTN FOR JUDGMENT NOTWITHSTANDING THE VERDICT, OR ALTERNATIVELY, MTN FOR NEW TRIAL, filed.  
eod 2-4-91 fas



- 1-31-91 299 Pltf's MEMORANDUM OF SUPPLEMENTAL AUTHORITY, filed.  
eod 2-5-91 fas
- 1-31-91 300 (GAK) FINAL JUDGMENT, entered. Parties ntfd. Judgment is entered against deft Clyde Iron and River Don Castings in accordance with the Judgment signed on 1-15-91. This cause is DISMISSED with prejudice as to Bridon Ropes, Ltd., International Southwest Slings, Inc., and Hendrik Veder, B.V. only. This is a FINAL JUDGMENT.  
eod 2-5-91 fas
- \* \* \*
- 2-11-91 305 TRANSCRIPT OF JURY CHARGES on 12-5-90 before Magistrate Kelt, filed (LOOSE IN FILE).  
eod 2-13-91 fas
- \* \* \*
- 2-19-91 308 Pltf's MEMORANDUM IN OPPOSITION TO AMCLYDE AND RIVER DON CASTINGS, LTD.'S MTN FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR ALTERNATIVELY FOR NEW TRIAL, filed.  
eod 3-07-91 fas
- 3-5-91 309 Pltf's UNOPPOSED MTN FOR DISPOSAL OF SLINGS, filed.  
eod 3-17-91 fas
- \* \* \*
- 2-20-91 311 Deft's (AmClyde and River Don Castings, Ltd's) NOTICE OF APPEAL from the jury verdict rendered on 12/7/90, the MEMORANDUM/ORDER signed on 1/14/91, the JUDGMENT signed on 1/15/91 and entered on 1/17/91, the

- FINAL JUDGMENT signed on 1/31/91 and entered on 2/5/91, filed.  
eod 3-11-91 jd
- \* \* \*
- 3-8-91 314 Deft's NOTICE OF APPEAL, as a cross-appeal as to all matters which has been or may be raised by plaintiff/appellant, McDermott, Inc., in its appeal, filed.  
eod 3-11-91 jd
- 3-11-93 315 Pltf's NOTICE OF APPEAL from the final judgment entered 2/5/91 and cross-appeal as to all matters which may be raised by defendants, filed.  
eod 3-11-91 jd
- \* \* \*
- 3-12-91 316 (GAK) ORDER, entered. Parties ntfd. Deft's MTNS FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND FOR NEW TRIAL, are DENIED.  
eod 3-13-91 fas
- 3-12-91 317 (GAK) ORDER, entered. Parties ntfd. Pltf's MTN FOR DISPOSAL OF THE SLINGS is GRANTED. eod 3-13-91 fas
- \* \* \*
- 3-14-91 319 (GAK) ORDER, entered. Parties ntfd. Pltf's MOTION FOR POST-JUDGMENT RELIEF (#295) is DENIED.  
eod 3-14-91 fas
- 3-14-91 320 (GAK) SUPERSEDING FINAL JUDGMENT, entered. Parties ntfd. All mtns seeking relief under rules 50 and 59 of the F.R.C.P. are DENIED. A FINAL

JUDGMENT is entered in this case. This is a superseding FINAL JUDGMENT.

eod 3-14-91 fas

3-14-91 321 (GAK) MINUTES OF BILL OF COST HEARING held 3/14/91, filed. Appearances O'Brien f/AmClyde and River Don Castings; Moseley f/McDermott. Pltf's Bill of Costs GRANTED in part and DENIED in part. Thomas G. O'Brien to draft proposed ORDER to be submitted to Mr. Moseley for concurrence prior to submission to the Court.

eod 3-17-91 fas

3-26-91 322 PLTF'S SUPERSEDING NOTICE OF APPEAL, from the superseding final judgment filed. Filing and docketing fees not paid.

eod 4-2-91 jd

\* \* \*

4-2-91 323 PLTF'S MTN FOR RECOVERY OF ADDITIONAL ITEMS IN BILL OF COSTS, filed. M/D 4/22/91 by clerk. (*Strike Order Prepared* - No separate proposed order.)

eod 4-5-91 fas

\* \* \*

4-5-91 325 DEFT'S NOTICE OF APPEAL from Judgment entered 2/5/91, and superseding final judgment entered 3-14-91, filed.

eod 4-10-91 dlm

\* \* \*

4-19-91 327 (GAK) ORDER, entered. Parties ntfd.  
1. Pltf's MTN FOR RECOVERY OF ADDITIONAL COST (#323) is DENIED.

2. Taxable costs are awarded in favor of pltf and against the deft, AmClyde, a Unit of AMCA International, Inc., and River Don Castings Limited in the amount of \$30,502.46 as follows (SEE ORDER IN FILE FOR FURTHER DETAILS).

eod 4-22-91 fas

4-19-91 328- Crtrptr Judicial Transcribers TRAN-  
355 SCRIPT of proceedings held 11/13/90 through 12/7/90. Trial (Volumes 1-28) filed. (Individual entries for each volume deleted on reproduction for Joint Appendix.)

eod 5-1-91 km

5-10-91 RECORD ON APPEAL FORWARDED TO THE COURT OF APPEALS consisting of 11 volumes of original pleadings, 36 volumes of transcript; 4 expandable folders of large pleadings (#'s 164, 165, 184, 187, 204, 285), 1 expandable folder of sealed pleading (#275) 18 binders and 15 expandable folders of trial exhibits.

\* \* \*

2-8-93 359 Certified Copy of USCA JUDGMENT, REVERSING in part and as modified, affirmed in part in accordance with the OPINION of this Court, filed.

eod 2-9-93 bpw

2-8-93 360 Certified Copy of USCA OPINION, filed.

eod 2-9-93 bpw

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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NO. 91-2246

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**McDERMOTT, INC.**  
**Plaintiff/Appellee/Cross-Appellant**

v.

**AmCLYDE, A DIVISION OF AMCA  
INTERNATIONAL, INC. and  
RIVER DON CASTINGS, LTD.**  
**Defendants/Appellants/Cross-Appellees**

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**RELEVANT COURT OF  
APPEALS DOCKET ENTRIES\***

4-4-91	McDermott Incorporated Notice of Appeal
4-15-91	AmClyde and River Don Notice of Appeal
5-15-91	Record on Appeal Filed - 49 Vols.
5-15-91	Six boxes of Exhibits and one sealed envelope filed
5-16-91	Motion of Appellants, AmClyde and River Don to Dismiss Appeal of McDermott Incorporated

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\* This chronological listing of docket entries relating to substantial matters in the Court of Appeals was abstracted by counsel from the Court of Appeals' docket, which is not purely chronological in form.

7-5-91	Order Denying With Reasons Appellants' Motion to Dismiss Appeal of McDermott Incorporated
9-30-91	Motion of Appellants to Supplement Record filed
9-30-91	Appellants' Brief filed
10-2-91	Appellants' Motion to Supplement the Record granted
11-30-91	Appellee's/Cross-Appellant's Brief filed
12-3-91	Cross-Appellant's Motion for Leave to File Record Excerpts in Excess Pages and Motion for Leave to Supplement Record (UNOPPOSED - GRANTED - rev. 12-11-91; Send Motion and Clerk's letter to SC Judge)
1-28-92	Appellant's Reply Brief/Response to Cross-Appellee's Brief filed
2-11-92	Cross Appellant's Reply Brief filed
6-1-92	Case Argued by Appellants and Appellee
12-11-92	Opinion signed and rendered; Judgment filed and entered
1-12-93	Appellee/Cross-Appellants' Petition for Rehearing En Banc filed
2-4-93	Judgment as and for the Mandate issued to Clerk; Record on Appeal returned to Clerk; Exhibits returned to Clerk
3-29-93	Notice of filing Certiorari Petition on 3-12-93
7-6-93	Order of Supreme Court: Granted 6-28-93
7-23-93	Preparing Proceedings on Certiorari

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**TRIAL TRANSCRIPT EXCERPT**

[November 14, 1990, Transcript Vol. 1, p. 3]

[Plaintiff's Announcement Of Partial Settlement]

[3]

MR. LEA: Yes, sir. Over the weekend, Your Honor, serious negotiations started with the sling Defendants. And I use the three gentlemen here collectively as sling Defendants. And it was – we received final authority Monday morning, and the settlement was bound. I know it was a federal holiday. I did call the Court and left a message in an attempt to – to inform the Court. And we did notify the other parties. In fact, I think they were notified that it was highly likely the case would settle on Saturday; but over the weekend, we couldn't get formal authority until Monday. The terms of the settlement are that McDermott will dismiss all claims with prejudice against the three sling Defendants in exchange for the payment of one million dollars, and I think 60 days was –

\* \* \*

**TRIAL TRANSCRIPT EXCERPT**

[November 14, 1990, Transcript Vol. 1, p. 21]

[Plaintiff's Acceptance Of Responsibility For Sling Defendants' Share Of Damages]

[21]

THE COURT: Do you think there are going to be many objections on the basis of relevancy or anything along those lines?

MR. LEA: I think there's going to be great deal on the basis of relevancy in view of the settlement. That's – that's – that's because –

(Pause – attorneys conferring)

MR. LEA: And let me tell you where I'm coming from, Your Honor. There used to be a question of who was responsible for the sling failure; McDermott, because they should have known better than to use it or the product manufacturer because he failed to warn. okay. If we accept responsibility, then the reasons of knowledge, failure to warn, to me become very irrelevant, because it's like admitting liability in a personal injury case and saying let's try it on damage. Very similar. And you – you don't go back and talk about the events that led to the responsibility. You just tell the jury I have responsibility, and I plan on doing that. So why would we want to go back and reargue a case that's already been settled?

\* \* \*



**TRIAL TRANSCRIPT EXCERPT**

**[November 14, 1990, Transcript Vol. 1, p. 76-78]**

**[Opening Statement Of Counsel For Plaintiff]**

[76]

sling manufacturer – I don't think their names are important, and the sellers of the sling. All parties, after the litigation got started and tests started being done and things like this, realized that there were no manufacturing defects in the slings; i.e., they didn't make them wrong, they didn't put them together wrong. What they did is the problem with the slings and the reason that it would only carry twice of its safe working load, rather than four times, is that the right hand and the left hand lay slings were combined, and that resulted in, as I told you before, a weakening. It went from four to one to two to one. Now, McDermott's original suit against the sling manufacturers was that they should have warned them not to put right hand and left hand lay slings together. The sling manufacturer's distributors responded by saying: McDermott's a big corporation; you're a sophisticated user, we don't need to warn you of defects that you knew about or, with the exercise of reasonable care, you should have known about. Now, remember I talked about amicable settlements before and we only go to Court when you can't reach an amicable settlement. McDermott became convinced, as I told you earlier, that the slings played little, if any, part in the casualty. So, therefore, McDermott and the sling manufacturers got together in exchange for a fractional amount of McDermott's damages, settled the case; and McDermott has dismissed them from the proceeding. No action was ever filed

against them by any other party. So, the case before you, the

[77]

jury, has now been greatly simplified. And that may be a comforting factor because otherwise we would have three more Defendants in the case and the trial would be much longer. They're gone now. Okay. And because they're gone though, the case has become simple because, to the extent that you find that the hook was improperly manufactured and designed, well, then to that extent McDermott contends they should be allowed to collect their significant damages from River Don, if it's manufacture, design, Clyde, or core testing, combination of both of them. To the extent that you, the jury, find that the sling paid any part in the casualty to the ex – or that you – you're going to determine what part it did play. And whatever part you determine that it did play, then because of the settlement with McDermott and British Wire Ropes – oop, I'm sorry, the sling manufacturers and distributors, then McDermott has to bear the responsibility for that, because that's what they paid us to do. Okay. Now, McDermott contends and we'll prove through eyewitness testimony that the hook failed first while performing the job it was intended or designed to perform, lifting heavy offshore structures. One thing I forget to mention to you is the load it was lifting the – called a Sohio Snaffer Deck (sic), the load weighed less than the ten million pounds that the sling manufac – I mean, excuse me, that the hook manufacturer, River Don and Clyde, guaranteed that it would be able to safely lift. We will prove that the breakage of this hook proximately caused McDermott

[78]

severe damage. Moreover, we'll prove to you that even if the sling parted first and caused and increased load on the hook, a properly designed and manufactured hook would have been able to take that weight, and not fail. In any event, we will show you that even if you believe that the sling went first, in that event, all - the only damage McDermott would have suffered would have been the loss of that sling and nothing else. Now, River Don and Clyde are going to try to refute McDermott's eyewitness testimony with theories of experts and probably what I'd like to call light shows. Okay. That's where you go back and you - you go make a movie of what you - you want it to show, and you show it to somebody and you put enough color and spectacular and flashing lights, then you - you expect somebody to say, well, that must be what happened. You know what this amounts to?

\* \* \*

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# TRIAL TRANSCRIPT EXCERPT

[November 29, 1990, Transcript Vol. 10,  
p. 2085]

[Argument Of Counsel On Evidentiary Objections]  
[2085]

MR. LEA: I think he's intermixing apples and oranges here. Judge -

THE COURT: Splice and things.

MR. LEA: Yes, splicing them together and not unravelling them. But what the - Your Honor, the real question is: you can be negligent all day, but you're only responsible for the damage your negligence cause absent an allegation of punitive damage which nobody's made here. You're negligent. You're negligent. You're responsible for the result of your action. He's trying to go back and prove something he doesn't have to prove; that is, we had knowledge of something and to the extent the slings caused the accident, to that extent, we're responsible. We're acknowledging, and you [sic] charge is sling. You're only responsible for the damage you do, and to the extent the slings caused damage, to that extent because of McDermott and the sling manufacturer's settlement, we bear the responsibility. You don't have to go prove something because what they prove can only lead to a finding of responsibility, and you're only responsible for the direct consequences of your own act, and we've already said, we're responsible for the slings, any part they played in it. Thank you.

\* \* \*

**TRIAL TRANSCRIPT EXCERPT**

**[November 29, 1990, Transcript Vol. 10, p. 2096]**

**[Argument Of Counsel And Colloquy With Court On  
Evidentiary Objection And Credit For Settlement]**

[2096]

MR. MOSELEY: We stipulated, he doesn't.

MR. COUHIG: I don't think as a cor - as a - I am very concerned and I don't want to get into the big brouhaha again as to how this effects, for example, I'm entitled to my *Hernandez* I believe credit for the fault of - or for the settlement.

THE COURT: Well -

MR. LEA: That doesn't effect it.

THE COURT: That doesn't effect this and that's going to be somewhere down the line. You're going to have a tough time with that since they have - that *Hernandez*, as I read it and perhaps I'm wrong, as I understand that of course is to prevent double recovery for anything.

MR. COUHIG: That's correct.

THE COURT: In other words, you can't get -

MR. COUHIG: He can't get 3.5 million dollars. He could get 2.5 million dollars.

THE COURT: No. That's not what - if - well, all right, you may be right if that's all he was suing for. Say he sued for 2.5 million dollars and he recovered 2.5 million dollars and they had this other million dollars, you're entitled to credit. No question about it under

*Hernandez*. But the problem, as I see it from your situation, and I may be wrong, but the problem as I see it from your situation, he's got two million dollars damage to the rig that he ain't going to be able

\* \* \*

**TRIAL TRANSCRIPT EXCERPT**

**[November 29, 1990, Transcript Vol. 10, p. 2104]**

**[Defendants' Requested Instruction To Jury Regarding  
Plaintiff's Acceptance Of Responsibility For Sling  
Defendants' Share Of Liability]**

[2104]

(Jury panel enters the Courtroom)

THE COURT: Be seated please. All right, Mr. Couhig. Oh, wait a minute. Members of the jury, McDermott, Incorporated admits that to the extent that the slings are at fault for the accident that occurred on the 10th of October of 1986 for any reason whatsoever then McDonald - then McDermott is legally responsible for that portion of the fault. All right.

\* \* \*



**TRIAL TRANSCRIPT EXCERPT**

[December 5, 1990, Transcript Vol. 25, pp. 2840, 2847]

[Closing Argument By Counsel For Plaintiff]

[2840]

The next thing is I informed that openly that we had settled with the sling manufacturer, and I said that because of the settlement, we had bought peace. Our differences were resolved. And I told you that because of that settlement, whatever fault you found on the slings, whether McDermott had ever been right or wrong, or the sling manufacturers were right or wrong to put it on McDermott because we're responsible. I told you that then, and we haven't denied it since. The next thing I've told you that we would prove, and promised you that we would prove, is that Clyde guaranteed that this crane and hook could safely list in excess of 10,000,000 pounds.

\* \* \*

[2847]

The next thing they promised you was that they would discredit one, or two, or three of the McDermott witnesses who would state that the hook broke first, and that they would prove that they would make it virtually impossible to believe McDermott's witnesses. I'm going to talk to you about that in just a second because I think the eye witnesses are a very, very strong part of our case. The next thing they promised to prove to you is that the blaming of the hook and the blaming of Clyde and River Don was after thought until we settled with the sling manufacturers on Friday. Now it really wasn't Friday. It was Monday, right before we opened up. I think if you'll

think back on the evidence, the really quarrel that Clyde and River Don had been telling you they had with McDermott is all they would do is blame the hook from day one. That was what they suggested to you, but yet, now they're telling you we never thought about the hook until we settled with the sling manufacturers on the day before trial? That isn't borne out. The next thing they promised to prove to you, through circumstantial and direct evidence, was that the sling arrangement was the sole and only cause of the accident. That means the sling went first. It didn't.

\* \* \*



TRIAL TRANSCRIPT EXCERPT

[December 5, 1990, Transcript Vol. 25, pp. 2854,  
and 2880-2881]

[Closing Argument Of Counsel For Defendants]

[2854]

MR. COUHIG: There is so much evidence over here you can hardly walk. We started the case by suggesting to you that this accident happened as a result of the fault of McDermott. Recall the words improper planning, not doing their homework, failing to communicate with each other. I believe I suggested in the opening statement not that I would be able to tear apart their witnesses, but that no person from McDermott would come forward and take responsibility for the sling arrangement that was there, putting together the right hand and the left hand, acting in contravention to common sense. Let me, if I might, review certain of the testimony.

\* \* \*

[2880]

MR. COUHIG: At the end of the day the evidence proves that this hook was capable. The law, I believe the Court will tell you, is a thing is defective only if it's unreasonably dangerous; that is, it doesn't do what it's designed to do. This hook did what it was designed to do. Read the John Hey letter. It doesn't suggest anything of the scenario that they did. That's a veiled attempt to try and suggest I don't know what. I - We puzzle over that all the time. What we know happened is this. The hook and the crane were tested and tested and tested. The hook would have failed before if there was a problem

with the hook. The hook would have failed before if they had rigged it improperly. It would be interesting to ask the person who decided to use the right hand and left hand slings whether he knew or not, but McDermott accepts responsibility for that. This was not a problem with the hook, but with the sling. Let me suggest to you - And I believe I may be getting near the end of my time. I know as a - as a defendant you always hate to go, you know, because you know he's going to come up and say this. And - and then you'd like to jump up and say well, wait, wait, wait, let me say that. I object a lot, incidentally,

\* \* \*

[2881]

because I believe in certain things and I think I have an obligation to do it. I've asked the Judge to tell you all that a few times, and he has because it's my obligation. But the ver - the questions that you have ask [sic], the very first question: Was the hook defective? The answer is no. You have to go on then - if you find that it was, was it a legal cause of this accident? Those are two distinct issues. So, if you find it was defective, it's possible to find it wasn't a legal cause. But then if you find that it was a legal cause, you have to figure out whether it was design, some failure of materials, some failure of one (sic), some misrepresentation, all of which the Court will tell you. And then you have to figure out whose fault it is, but the Judge will tell you in the - in the interrogatory the sling was the cause. And then you have to, if you get down to this point, apportion the damages among Clyde, among River Don, among McDermott and Hudson. Hudson

Engineering is the company, incidentally, that Mr. Whitcomb works for. They designed the sling arrangement. And then they will want you to figure out, if you answer all those, what amount of money to compensate McDermott for causing their own failure.

\* \* \*

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# TRIAL TRANSCRIPT EXCERPT

[December 5, 1990, Transcript of Jury Charges, Doc. 305, R.O.A. Vol. 47, pp. 27-29, 41, 43-46]

[27]

\* \* \*

Negligence is a legal cause of damage if it directly and in natural and continuous sequence produces, or contributes substantially to producing such damage, so that it can reasonably be said that except for the negligence, the loss, injury, or damage would not have occurred or would not have been as great. Negligence may be a legal cause of damage even though it operates in combination with the act of another, some natural cause, or some other cause if such other cause occurs at the same time as the negligence and if the negligence contributes substantially to producing such damage. If a preponderance of the evidence does not support the plaintiff's claim, then your verdict should be for the defendants. If, however, a preponderance of the evidence does support the plaintiff's claim, you will then consider the defense raised by the defendants. The defendants contend that the plaintiff was himself negligent and that such negligence was a legal cause of his own injury. Specifically, the defendant claim - the defendants claim that plaintiff

[28]

was negligent in misusing cable laid slings and overloading the hook. This is a defensive claim, and the burden of proving that claim by a preponderance of the evidence, is upon the defendants who must establish: One, that the

plaintiff was also negligent; and that such negligence was a legal cause of the plaintiff's own damage. If you find in favor of the defendants on this defense, that will not prevent recovery by the plaintiff. It only reduces the amount of plaintiff's recovery. In other words, if you find that an accident was due partly to the fault of the plaintiff, that his own negligence was, for example, ten percent responsible for his own damage, then you would fill in that percentage as your finding on the special verdict form which I will later explain to you - or which I will explain in a moment. Such a finding would not prevent the plaintiff from recovering; the Court would merely reduce the plaintiff's total damages by the percentage that you insert. Of course, by using the number ten percent as an example, I did not mean to suggest to you any specific figure at all. If you find that the plaintiff was negligent, you might find one percent or ninety-nine percent, or any other percent that you think is reasonable under the circumstances. If the evidence proves negligence on the part of the defendants which was a legal cause of damage to the plaintiff, you should award the plaintiff an amount of money that will fairly and adequately compensate him for such damage. You are instructed that the failure of a sling at a load less

[29]

than its rel - than its rated minimum breaking strength is a cause of damage to the deck. If the sling had not failed, damage to the deck from the hook failure would have been substantially lessened.

\* \* \*

[41]

You should consider the following elements of damage to the extent you find them proved by a preponderance of the evidence an [sic] no others. A defendant cannot be held liable for damages that he has not been shown to have caused. The measure of such damage to Plaintiff's property is the reasonable cost of returning Plaintiff and its property to pre-accident condition.

\* \* \*

[43]

And the jury interrogatories are thirteen in number, and the first jury interrogatory: Do you find from a preponderance of the evidence that the hook was defective in any of the ways alleged, and you will answer "yes" or "no". Then if you answer "yes", then you will go to interrogatory number two. If you answer "no", then you will skip the balances of the interrogatories and you will go to interrogatory number twelve. All right, interrogatory two: If the answer to Interrogatory One - Number One was "yes", do you find by a preponderance of the evidence that the hook was a legal cause of the damages; and then you will answer "yes" or "no" to that, and if you answer "yes" to that, you will then go to Interrogatory Number 3. And In - Interrogatory Number 3, if the answers to Interrogatories 1 and 2 were "yes", do you find from a preponderance of the evidence that the defect was, and there are four possibilities: one of design, either "yes" or "no"; one of materials or workmanship, and answer either "yes" or "no"; and then a failure to



[44]

warn and you would answer either "yes" or "no"; and then one of misrepresentation, and then you would answer "yes" or "no". And then Interrogatory Number 4, if the defect was one of materials or workmanship, do you find by a preponderance of the evidence that the negligence or fault of any of the following was a cause of the defect, and that will be (a) River Don Castings, and as to River Don Castings, you will answer "yes" or "no"; AmClyde, and as to them, you will answer either "yes" or "no"; and then as to McDermott Incorporated, you will answer either "yes" or "no". All right. Now, then, Interrogatory Number 5: You have been instructed that the failure of the sling at a load less than its rated minimum breaking strength is a cause of damage to the deck and crane. If you have also answered interrogatories 1 and 2 "yes", please state what proportion or percentage of plaintiff's damages you find from a preponderance of the evidence to have been legally caused by the fault of the respective parties. And then again, you will answer in percentage as to AmClyde, River Don Castings, McDermott as well as the sling Defendants, and then Hudson Engineering, so there are four different parties that you would have to come to a percentage on, and then the total of that should total one hundred percent. All right. Six: Do you find by a preponderance of the evidence that AmClyde breach any express warranties in addition to the manufacturing warranty found in the original contract in regard to the hook as designed by the Plaintiff, and you will answer

[45]

either "yes" or "no". Seven: If so, do you find that AmClyde's breach of these express warranties was a producing cause of the damages suffered by McDermott, Inc., and you will answer either "yes" or "no". Interrogatory 8: Do you find by a preponderance of the evidence that AmClyde breached any implied warranties in regard to the hook as alleged by Plaintiff, and you will answer "yes" or "no". Number 9: If so, do you find that AmClyde's breach of implied warranty is a producing cause of the damages suffered by McDermott, Incorporated, and you would answer "yes" or "no". Number 10: What sum, in dollars, without regard to the percentages of fault of any party, do you find from a preponderance of the evidence is required to compensate McDermott, Incorporated for damages to the deck as the result of this accident, and you will enter a dollar amount. As to Interrogatory 11: Do you find by a preponderance - Do you find by a preponderance of the evidence that McDermott, Incorporated is entitled to pre-judgment interest, and then, if so, what percent interest.

MS. SPEAKER: (Indiscernible).

THE COURT: Yes, I'm changing that because of prior - and you will put - you will decide what percent interest should be paid and would insert that percentage. Interrogatory 12: Do you find by a preponderance of the evidence that AmClyde is entitled to be compensated by the replacement of the hook and associated charges, and you will answer either "yes" or "no". And Interrogatory 13: State what sum, in dollars, without regard to



[46]

the percentage or fault of the party, do you find from a preponderance of the evidence is required to compensate Clyde for the replacement of ~~the~~ hook, and you will state a dollar amount. All right. If, during your deliberations – No, wait a minute. You will take the verdict form; that is the stipulation, to the Jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill it in, sign – date and sign it, and return to the Courtroom.

\* \* \*

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**SUPREME COURT OF THE UNITED STATES**

No. 92-1479

McDermott, Inc.,

Petitioner

v.

AmClyde and River Don Castings, Ltd.

ORDER ALLOWING CERTIORARI. Filed June 28, 1993.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted limited to Question 1 presented by the petition.

June 28, 1993

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